

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CITY OF SOUTH BEND, BY ITS
CORPORATION COUNSEL ALADEAN M.
DEROSE.

Petitioner,

v.

UNITED STATES OF AMERICA, ERIC H.
HOLDER, JR., IN HIS OFFICIAL CAPACITY AS)
ATTORNEY GENERAL OF THE UNITED
STATES, SOUTH BEND COMMON COUNCIL,
TIM CORBETT, DAVE WELLS, STEVE
RICHMOND, BRIAN YOUNG, AND SANDY
YOUNG,

Respondents.

3:12-CV- 475

**SOUTH BEND COMMON COUNCIL'S
MOTION FOR SUMMARY JUDGMENT ON THE CITY OF
SOUTH BEND'S COMPLAINT FOR DECLARATORY JUDGMENT**

Comes now Defendant, the South Bend Common Council, a Defendant in the City of South Bend's Complaint for Declaratory Judgment in these consolidated cases, pursuant to F.R.C.P. 56 and Local Rule 56.1, and respectfully requests the Court to grant summary judgment in its favor on the City of South Bend's Complaint for Declaratory Judgment. The Common Council further requests the Court to enter a final appealable order pursuant to Rule 54(b) because there is no just reason for delay in declaring that the recordings are excluded from the Federal Wiretap Act. In support of this motion, the South Bend Common Council states:

1. Rule 56 mandates the Court to grant summary judgment when there are no genuine issues of material fact and a party is entitled to judgment as a matter of law.

2. The undisputed material facts establish that the recording of telephone lines within the South Bend Police Department was done in the ordinary course of the police department's business and are therefore excluded from the Federal Wiretap Act.

3. A memorandum of law in support of this Motion for Summary Judgment is being filed simultaneously with the motion.

4. The South Bend Common Council respectfully request this Court to find that there is no just reason for delay in entering a final appealable judgment in favor of the South Bend Common Council and, further, to direct the clerk to enter final judgment in favor of the South Bend Common Council on the City of South Bend's Complaint for Declaratory Judgment.

/s/Robert J. Palmer

E. Spencer Walton, Jr. (1000-71)

Robert J. Palmer (6316-71)

Attorneys for South Bend Common Council

MAY • OBERFELL • LORBER

4100 Edison Lakes Parkway, Suite 100

Mishawaka, IN 46545

Phone: (574) 243-4100

Fax: (574) 232-9789

rpalmer@maylorber.com

CERTIFICATE OF SERVICE

I certify that a copy of the forgoing was served upon all attorneys of record via the Court's ECF system on December 13, 2013.

/s/Robert J. Palmer

Robert J. Palmer